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OFFICE OF PETITIONS

In re Patent No. 7,575,924 : DECISION ON REQUEST
Trono, et al. : FOR
Issue Date: August 18, 2009 : RECONSIDERATION OF
Application No. 10/010,081 : PATENT TERM ADJUSTMENT
Filed: November 9, 2001 : and
Atty. Docket No. CLFR:010US/ : NOTICE OF INTENT TO ISSUE
10110677 : CERTIFICATE OF CORRECTION

This is a decision on the petition filed on May 18, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by two thousand seventy-eight (2,078) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand, three hundred and sixty (1,360) days¹ is **GRANTED to the extent indicated herein.**

¹ The period of overlap between the "A" delay and the "B" delay is 0 days, not 89 days as patentees state. It is noted that, in this case where no Request for Continued Examination was filed, the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A) is the entire period during which the application was pending before the Office, from the filing date of the application to the issue date of the patent. It is further noted that "A" delays and "B" delays overlap only if such delays occur on the same calendar day. The relevant period of "B" delay began January 26, 2007, and ended August 18, 2009. There is no period of "A" delay and "B" delay that occur on the same calendar day. Thus, the period of overlap between the "A" delay and the "B" delay is 0 days.

It is noted that patentees failed to account for the filing of the notice of appeal on February 13, 2006. The Office reminds patentees that the period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). In this instance, the period consumed by appellate review is 807 days, beginning on the date on which the notice of appeal to the Board of Patent Appeals and Interferences was filed, February 13, 2006, and ending on the date the Decision on Appeal affirming the examiner was mailed, April 19, 2008. Thus, the B delay is 936 days (1743 - 807). Accordingly, the patent term adjustment is 1360 days (503 days of A delay + 936 days of B delay - 0 days of overlap - 79 days of applicant delay).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent

The Office acknowledges receipt of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one thousand three hundred and sixty (**1,360**) days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,575,924 B2

DATED : Aug. 18, 2009

INVENTOR(S) : Trono et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (1664) days

Delete the phrase "by 1664 days" and insert -- by 1360 days--